

KAUA'I PLANNING COMMISSION
REGULAR MEETING
April 12, 2016

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Mahoney at 9:04 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Sean Mahoney
Vice Chair Louis Abrams
Mr. Wayne Katayama
Mr. Roy Ho
Mr. Kimo Keawe

Absent and Excused:
Ms. Glenda Nogami Streufert

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Dale Cua; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Mahoney called the meeting to order at 9:04 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Katayama?

Mr. Katayama: Here.

Mr. Dahilig: Commissioner Ho?

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Abrams?

Mr. Abrams: Here.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Streufert? Chair Mahoney?

Chair Mahoney: Here.

Mr. Dahilig: Chair Mahoney, you have five (5) members present this morning.

APPROVAL OF THE AGENDA

Mr. Dahilig: Next on the agenda is the approval of the agenda. The Department would recommend moving Item H to the very end of the meeting and then adjourning the meeting immediately after the conclusion of Item H in executive session.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: Move to change the agenda to moving (Item) H, our executive session, to the end of the agenda.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried 5:0.

MINUTES of the meeting(s) of the Planning Commission

Meeting of February 23, 2016

Meeting of March 8, 2016

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item D. These are the minutes of the meetings of the Planning Commission for February 23, 2016 and March 8, 2016.

Mr. Abrams: Move to approve the minutes of February 23rd.

Mr. Katayama: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 5:0.

Mr. Abrams: Move to approve the minutes of the March 8th meeting.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carries 5:0.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item E. This is Receipt of Items for the Record. We do not have anything supplemental from the Department to add to the record this morning.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (NONE)

New Agency Hearing (NONE)

Continued Public Hearing (NONE)

New Public Hearing (NONE)

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We are on Item F. This is the Hearings and Public Comment period. We do not have any Continued Agency Hearings, New Agency Hearings, Continued Public Hearings, or New Public Hearings. We do not have anybody signed up under Item F.5. to testify on any other agenda item; however, I would say that there are two (2) pieces of testimony that have been received by the Department from Marilyn Syreen and Rayne Regush on behalf of the Wailua-Kapa'a Neighborhood Association related to Executive Session Item I.4. Other than that, Mr. Chair, I would recommend making a final call for any public testimony on any other agenda item at this point.

Mr. Abrams: Mr. Clerk, we have this one from Mr. Chong. Is that a handout?

Mr. Dahilig: Okay, I guess we can also add that...actually, that is a communication. It's not relating to a specific agenda item. It's just for informational...

Mr. Abrams: Got it.

Chair Mahoney: Any member of the public care to... Could you state your name for the record, please?

Rayne Regush: Good morning, Chair and Commissioners. My name is Rayne Regush. I'm testifying on Item H., your executive session that you'll have later in the session [sic]. I wanted to fill you in about an event that transpired on this property just last week when construction of the dust fence began along the coastline, but it was right on the certified shoreline despite County rules requiring a 40-foot setback. So responding to our concerns, the County did notify the landowner to move the fence, but it's unclear how this mistake occurred. We also confirmed with Public Works Engineering Division that it may take over two (2) months before the Grubbing, Grading, and Stockpiling Permits are approved. And without it, of course building cannot commence, so it seems as though the dust fence, although permissible with the SMA Permit, might be premature; especially considering the Coco Palms' long-standing fence that has been up there.

Also, Coconut Beach Development has another certified shoreline pending. It's Application KA-407. The photos that are submitted on our testimony show evidence on the ground of the high wash of the waves and we think there is an attempt to minimize the width of the public beach. So if you pay attention to those photos that might be helpful.

We are also concerned about the Grant of Easement. It's Condition No. 5 on their permit, and it requires lateral coastal multi-use beachwalk. We recently learned that the developer is making a major monetary contribution to the path, and it just raises doubts whether the path's location will be sited fairly or, perhaps, be biased more towards the resort's interests. There is also concern because this developer intends to remove the mature ironwood trees from the beach, and you'll see more photos of that. Because the trees don't block access along the beach corridor, the coastal environment should really remain intact.

Lastly, looking at the civil case and the tolling agreement, there was a letter of memorandum provided by ownership, and it stated that the subject site would not be subject to the imposition of any laws or ordinances enacted after 2007, January, to the end of the total development period provided that Coconut Beach Development does not seek to extend or modify the entitlements. Yet, this project, we see, you know, moving forward very slowly and we've recently extended the deadline for completion of the first phase to December 9th. So does that trigger that clause about not seeking to extend or modify the entitlements?

Finally, we just invite you to walk along that coastline. You can assess the community's coastal resource assets there. And...

Mr. Dahilig: Three (3) minutes, Mr. Chair.

Ms. Regush: And consider whether there are liabilities to the County by exempting this developer from current studies and measures to protect the community and property along the ocean. Mahalo.

Chair Mahoney: Thank you.

Ms. Regush: Any questions? Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair, the Department would recommend making one (1) final call for any public testimony on (inaudible).

Chair Mahoney: Any other members of the public care to testify on any agenda item? Seeing none.

CONSENT CALENDAR

Status Reports (NONE)

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 4/26/16. (NONE)

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item G, Consent Calendar. We do not have any status reports, nor any Director's reports to schedule for this morning.

GENERAL BUSINESS MATTERS

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines by Toni Sutherland/Alta Management Services LLC for continued operation of an unpermitted vacation rental, TMK No. (4) 58011059-0001, Hā'ena, Kaua'i, to a Hearings Officer (Contested Case No. CC-2016-8); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Mr. Dahilig: We are now on Item I.1. This is Clerk of the Commission's recommendation to refer an appeal of the Planning Director's decision related to the Notice of Violation and Order to Pay Fines by Toni Sutherland/Alta Management Services LLC for continued operation of an unpermitted vacation rental, TMK No. (4) 58011059, CPR 1, in Hā'ena, Kaua'i, to a hearings officer (Contested Case No. CC-2016-8). We request a delegation of authority to the Clerk of the Commission to procure and appoint a hearings officer on behalf of the Commission for the instant appeal.

As transmitted to the Commission, this was an appeal that was sent in by the entity that was fined by the Department, and we received that letter dated March 20, 2016. We are recommending, as is their rights under our rules and our procedures, to appeal the matter and would recommend that it get sent over to the Hearings Officer.

Chair Mahoney: Is there a representative? Could you state your name for the record, please?

Jonathan Chun: Good morning. Jonathan Chun on behalf of Toni Sutherland/Alta Management Services LLC. Thank you, Mr. Chair and members of the Commission. On behalf of Ms. Sutherland, I mean, I wanted to just briefly let you know that based on Ms. Sutherland's superhuman efforts in tracking down the website that triggered this with the Planning Department, they were able to determine that the website is not theirs. It was done by somebody as an experiment for their sales pitch and it does not have anything to do with Ms. Sutherland or her company. But be that as it may, we understand the Department's position on that and the need to actually have an evidentiary hearing, so we are willing to participate in that and we have no objections to the assignment of this matter to a hearings officer.

Chair Mahoney: Thank you. Any questions for the applicant? No? Okay, the Chair will entertain a motion.

Mr. Abrams: I move to appoint a hearings officer to conduct the required contested case hearing relating to the above referenced appeal, which is Toni Sutherland/Alta Management Services LLC, Contested Case Hearing CC-2016-8.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried 5:0.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines by Jonathan Chun, Esq., representing John & Lorna Hoff (Kaua'i Banyan Inn) related to Use Permit U-2015-28, Class IV Zoning Permit Z-IV-2015-29, and Special Permit SP-2015-9, Conversion of an Existing Residence into a Homestay Operation, TMK No. (4) 25005080, Lāwa'i, Kaua'i, to a Hearings Officer (Contested Case No. CC-2016-6); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I.2. This is Clerk of the Commission's recommendation to refer an appeal of the Planning Director's decision related to the Notice of Violation and Order to Pay Fines. This is by Jonathan Chun, Esq., representing John and Lorna Hoff of Kaua'i Banyan Inn related to Use Permit U-2015-28, Class IV Zoning Permit Z-IV-2015-29, and Special Permit SP-2015-9, conversion of an existing residence into a homestay operation, TMK No. (4) 25005080, in Lāwa'i, Kaua'i to a hearings officer (Contested Case Hearing No. CC-2016-6); and request for delegation of authority to Clerk of the Commission to procure and appoint a hearings officer on behalf of the Commission for the instant appeal.

There is a memorandum from our department, again, recommending the same action as in I.1. The Department would...again, would recommend, I guess... The Clerk of the Commission, sorry, would recommend referring this over to the Hearings Officer.

Chair Mahoney: Could we hear from the representative for the applicant, please?

Mr. Chūn: Sure. Jonathan Chun on behalf of the applicants, John and Lorna Hoff. And also, we have Item No. 3. If the Commission would want to, we could handle that at the same time.

Mr. Dahilig: If there are no objections, if I could, maybe, make a statement on Item I.3. as well; if there are no objections.

Chair Mahoney: Are there any objections? Hearing none.

Mr. Dahilig: So Item I.3. is somewhat related with the respect to the actual permit that is being handled by the Hearings Officer, I believe, at this point. The Department doesn't have any objections with respect to the withdrawal of the letter that was sent on 03/09/16, and would have no objections to the case being continued as-is, as if the correspondence never was received. However, because both were transmitted to the Commission, for records purposes, we need to make sure that those...that this gets memorialized. But, again, just for the record, we have no objections to the withdrawal of the withdrawal.

But Item I.2. is related specifically to a fine, which they have a separate and independent right to...apart from the permit proceedings, to actually appeal a fine that we had issued based on enforcement action, so they are...the conversation can bridge both, but we wanted to just state our "no objection" for the record.

Mr. Chun: Thank you. Mr. Chair, Jonathan Chun on behalf of applicants John and Lorna Hoff for both Item Nos. 2 and 3. Just to...for background, what's going on, I'm in receipt of a doctor's note from both John and Lorna Hoff's doctor, and I think I've transmitted that to the County Attorney's office on that, indicating that due to serious health problems...they are both not in super good health. But based upon the doctor's recommendation, the doctor has advised both of them not to participate or go through any hearings at this point in time because of their health. They really want to present their case in front of the Commission or the Hearings Officer, whatever that may be, but based upon their advice from their doctor...I've been telling them don't be a hero and jeopardize your own health because of this, so based on that, as far as Item No. 2, we have no objections to referring the matter to a hearings officer. We've been in discussion with the current hearings officer on these medical issues, and based on No. 3, we request that they be allowed to withdraw their initial withdrawal of their application. Again, because of their health, they were under some serious, as you can see, mental and emotional things of what to do with both of them, and they were having a hard time deciding. But, I think, at the last thing, I think they would want to say they want to continue, but be allowed to at least have these hearings when their health will allow them to. So I would thank the Commission for their consideration in this delicate situation.

Mr. Keawe: I have a question, Mr. Chair.

Chair Mahoney: Yes.

Mr. Keawe: So, Mike, do we handle it one at a time? (No.) 2 and then (No.) 3.a.?

Mr. Dahilig: Yes. I would say to handle Item 2 and Item 3 separately.

Mr. Keawe: Okay.

Mr. Chun: Any questions? If not...

Chair Mahoney: Are there any questions for the...?

Mr. Katayama: Well, Mr. Chair, can you restate what Item 2 ultimately is with the withdrawal of the withdrawal? And Item 3?

Mr. Dahilig: Okay. So Item 2 is related to a situation where...because of the permit actions, there was a Cease and Desist Order that was issued; that's why they are somewhat related. So with respect to Item 2, this, though, does trigger a separate contested case hearing number, as you see from what has been tagged as Contested Case Hearing No. 2016-6, so that requires an action by the Commission to either receive and refer, or receive and hear the action. Our recommendation is to receive and refer. With respect to Item No. 3, this is related to the permit

contested case hearing that is currently ongoing. All that we would ask the Commission to do is receive both letters for the record, and no action needs to be taken, but it's just...we need to document it for the Contested Case Hearing purposes.

Mr. Katayama: So with the withdrawal and the request by the applicant to defer based on their health conditions, how does that impact the process?

Mr. Dahilig: At this point, I can't speak for Mr. Chun, but it's really up to Mr. Chun to state what rights they may or may not be waiving as a consequence of this.

Mr. Chun: If I may, Mr. Chair.

Chair Mahoney: Yes.

Mr. Chun: Okay. On Item No. 3, what happened is initially...my understanding is when the Hoff's got their diagnosis or prognosis from the doctor regarding their health and the problems with their health, they made a decision, which was to stop everything because of their health and ask for, you know, if they could, to get their application fee back. Based upon that communication with me and the communication from the doctor, I sent a letter saying they wanted to withdraw their application. But after that, subsequent to that, I guess discussing it with their doctor again and between their family members, they wanted to continue their application but at a time when their health would permit. So I sent a second letter saying the applicants changed their mind, or basically want to continue their application, and that's the second letter on 03/23/16, which you see. So there were two (2) letters; 03/09/16 when they got the initial diagnosis from their doctor, and then after that, after they had more time to sit down with the doctor, they asked just to continue it, rather than withdraw it altogether, and that's the second letter. So what we would want is just to continue with the hearing on this...(inaudible) just to let the Commission know, we already have been in communication with the Hearings Officer, I think was Mr. Kimura, on this matter and we've already continued this matter to November 2016, subject to, you know, their health then, and so we've made a commitment to the County and the Hearings Officer that in the event...the closer we get to November, you know, we are going to have to give them an update on Mr. and Mrs. Hoff's health status. But we've already communicated that, so the hearing has been postponed already by the Hearings Officer to November sometime.

The second item is basically, as the Director did indicate, it arises out of the...I gather there was a follow through investigation by the Department whether or not they were renting to transient. The Department believes that they are renting. The Hoff's believe otherwise. So, again, that's an appeal. We have no objection to referring that matter to a hearings officer. But again, the hearing probably should wait until after their health permits, but they will be willing to testify at that time when their health permits in terms of their long-term renters that they have on the property.

So those are the two (2) matters; No. 2 and No. 3.

Chair Mahoney: Okay, thank you.

Mr. Katayama: Can I ask a question for the Department, please?

Chair Mahoney: Yes.

Mr. Katayama: What is the status of the Notice of Violation and Order to Pay Fines?

Mr. Dahilig: So that is what is being appealed as part of Item I.2. Because we've issued it, I guess, the person being cited, who are the Hoff's, have the right to appeal that, and that's what is triggering the second contested case hearing.

Mr. Katayama: So in the interim, is the operation ongoing?

Mr. Dahilig: Well, without getting into too much detail because these are facts that have to get sorted out, the premise of our citation was that they were continuing operation, and we have evidence to show as such, contrary to the agreements issued pursuant to a previous Cease and Desist Order that was issued.

Mr. Katayama: Thank you.

Chair Mahoney: For clarification, then, Item 2 would be to receive?

Mr. Dahilig: To receive and refer, or receive and hear, depending on the Commission's preference on it. Our recommendation is to refer, but it's up to the Commission whether they want to hear the case or refer it to a hearings officer. And Item 3 would just be to receive both correspondences dated 03/09/16 and 03/23/16.

Chair Mahoney: Okay. So if we could take Item 2.

Mr. Keawe: Okay. I make a motion to receive and refer, related to Use Permit U-2015-28, Class IV Permit Zoning Permit Z-IV-2015-29, and Special Permit SP-2015-9, conversion of an existing residence to a homestay operation, for that particular issue. Receive and refer for contested case hearing.

Chair Mahoney: Okay.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any discussion?

Mr. Katayama: I have, sort of, a comment; maybe it's more of a policy issue. In the resolution of violation where the party maintains or has the ability to continue until it's resolved, when we grant delays, you know, somehow that doesn't strike a balance in a normal resolution process. How does...from a policy point of view, how does the Department handle these situations?

Mr. Dahilig: I would say these are all handled on a case-by-case basis, you know, concerning the type of use, the violation that is reported to be ongoing, if there is a settlement to bring

somebody into compliance whether or not there is an agreement to cease the use or continue the use, so this is...it's more layered than having a rubric that we follow, necessarily, for certain types of cases. So...

Mr. Katayama: I guess my question is, how do you keep the parties neutral?

Mr. Dahilig: In terms of?

Mr. Katayama: Any kind of delays.

Mr. Dahilig: Again, I think it relates to the immediate need to cease and desist whether or not it is...the Department feels, as part of its discretionary authority to cite, whether it feels that something needs to be terminated immediately or needs to be brought into compliance. I think that's the first question that kind of comes up. The second thing, then, at that point is, is there an agreement that's part of a compliance plan. If the Department wants to assert that the use does stop, whether that is part of that compliance plan or not part of that compliance plan. Again, we don't have a rubric for every single one of these citations; rather they are dealt with on a case-by-case basis.

Mr. Katayama: So does the Department see a path forward to bringing this into compliance? Or it's just an outright prohibited use based on its current interpretation of the statute?

Mr. Dahilig: Well, again, not getting into too much of the allegations and the facts behind it because this does need to go to a factual hearing, there are instances where...when we ask for people to come into compliance, we tell them come in for permits, but in the interim, while you are applying for permits, we want you to cease and desist your use. So if that was the compliance plan agreement based on the initial citation, that is what (inaudible) expectations of the actions are, but again, I cannot...I am only illustrating what could happen in situations where a negotiated compliance plan is brought before our department to sign-off on it in order to get people to come into compliance with the law. I would also cite HRS 46 1.524, which, when you look at the fine structure, it encourages a culture of compliance first before we get to an initial fine. So when you look at a situation like this, most likely it is what we would characterize as a second strike versus a first strike. And so those were the types of situations where...when the Commission sees a fine situation, and it is not for absence of the Department trying to bring people into compliance first.

Mr. Katayama: Well, I'm not advocating a fine. What I'm advocating is a resolution where both the public's interest, as well as the rights of the land...property owner, are protected.

Mr. Dahilig: Right.

Mr. Katayama: And in the event where there is a Notice of Violation and you allow to continue, how does that strike a balance until it's resolved?

Mr. Dahilig: And like I mentioned earlier, it really comes down to the facts of what has been presented; the type of activity that is being, you know, that is occurring on the property, the

immediate impact to the surrounding community, so it's...again, we don't have a rubric that we would necessarily follow as a pattern for every single one of these cases.

Mr. Katayama: So in this case, there was a Notice of Violation and an Order to Pay Fines issued.

Mr. Dahilig: Yes.

Mr. Katayama: So has that, sort of, risen to the second layer?

Mr. Dahilig: You would only see a situation...if its citations under County Code, you would only see the Order to Pay Fines on a second notice. So what usually happens is a zoning compliance notice comes first, we instruct them to come into compliance with the law either a (inaudible) use and come in for permits, or come in with a negotiated compliance plan. If they are not within the terms of their compliance plan, then we view that as a continuing use of the property in violation of the initial notice, and that's why, if you see a fine letter, that is already the second time that we have given cause to somebody to come into compliance with the law.

Chair Mahoney: Okay. Any further discussion?

Mr. Abrams: Yes. One (1) question. Okay, I get that. So I can't remember how long ago this was. The Department's report came out to deny their application when you first sent them a compliance letter, I guess, right, to come in. And then it went to...did we already assign this to a contested case and that's why we have a number here now?

Mr. Dahilig: Yes, that's Item I.3.

Mr. Abrams: And so along that line, this was moving along that, and then this other issue, where you noticed them in regards to them continuing their operation when they were supposed to cease and desist, is now being folded into that specific one?

Mr. Dahilig: They are related because the Item I.3.a. was...again, not getting into too much detail because we have to get this before a hearings officer...related to a compliance plan situation. We had instructed them, based off of the first zoning compliance notice, to come and get your permits.

Mr. Abrams: Yeah.

Mr. Dahilig: That's what this is.

Mr. Abrams: Yeah.

Mr. Dahilig: But the compliance plan also has other terms and conditions that we view as a means to remediate the zoning compliance notice that was initially issued. So, you know, without getting, again, into too much factual detail of what they did or what they did not do, that is typically the structure of how we do enforcement.

Mr. Abrams: So at that point, then, where we have now done the contested case for the application that came in in 2015, you are asking us whether or not we should route this, now, to a compliance...I mean, to a hearings officer for the specific appeal, right now, of the Hoff's in regards to...

Chair Mahoney: Yeah, there's a motion on the floor now to...

Deputy County Attorney Jodi Higuchi-Sayegusa: Right.

Chair Mahoney: So I think we should get back to the motion.

Mr. Katayama: Well, I guess...if I could make a comment, this is where it's sort of hard to understand and, for me, to organize it. I'm not sure what comes first. It seems (Item) 3 is sort of the central issue where, you know, is it okay to do or not? And (Item) 2 is sort of the adjunct to whatever happens in (Item) 3.

Ms. Higuchi-Sayegusa: Should (Item) 2...oh, I'm sorry...(Item) 2 go to the Hearings Officer, the Hearings Officer will have the discretion whether to...how to order the two (2) matters and maybe even consolidate both matters for the sake of efficiency as the Hearings Officer, you know, because he has the authority to control the course of hearings and motions and those types of things.

Mr. Keawe: My question is, is it the same case number?

Ms. Higuchi-Sayegusa: It's two (2) separate cases and two (2) separate issues; one (1) is the appeal of the permit...

Mr. Keawe: But when you said the Hearings Officer has the ability to consolidate the two (2) issues, how would you do that?

Ms. Higuchi-Sayegusa: I mean, it would have separate case numbers, but he will be able to, you know, it will be up to his discretion how he wants to handle those two (2) matters. But for the sake of efficiency, it probably would be prudent for him to consolidate both, or you know, it would be up to the parties to decide.

Mr. Keawe: The assumption being it would be the same case [sic] officer?

Ms. Higuchi-Sayegusa: It would be two (2) separate, but the hearing might be conducted at the same time. But that would be up to the Hearings Officer and the parties to work out, kind of, how that's (inaudible).

Mr. Chun: If I may, Mr. Chair.

Chair Mahoney: Yes.

Mr. Chun: Those are good questions. All I can say is, on behalf of the Hoff's, we are willing to work with the Department to try to resolve these procedural things. I mean, those are good questions, and I've went through them in my head, but I have no answer. But rather than for me to say that's what it is, I think it really...because this is new ground. (Inaudible) This is the first time, I think, this is happening in front of an application and a Notice of Violation at that same time. On behalf of the Hoff's, they're willing...I think we want to sit down and work with the Department in terms of how this is going to play out procedurally. I mean, we can guess, we can say this is what it should be, but I think Ms. Sayegusa is correct. It's something that the parties, we, the Department and the Hoff's, kind of have to work it out in the end to see what is the best way to do it.

Chair Mahoney: Thank you. Okay, so can we get back to the motion on the floor? To repeat the motion to...

Mr. Dahilig: To receive and refer.

Chair Mahoney: Receive and refer for Item No. 2. We had a motion. Do we have a second?

Mr. Abrams: Second.

Mr. Ho: Yeah, right here.

Chair Mahoney: And we had discussion. All in favor? (Unanimous voice vote) Opposed? (None) The motion will carry 5:0.

Withdrawal (3/9/16) of Contested Case CC-2015-18, Class IV Zoning Permit Z-IV-2015-29, Use Permit U-2015-28, Special Permit SP-2015-9, Tax Map Key (4) 2-5-005:080, CPR Unit 1 = John R. Hoff Trust and Lorna E. Hoff Trust by Jonathan Chun, Esq.

Chair Mahoney: Okay, so Item No. 3. Okay, this would be...

Mr. Abrams: That's to...?

Chair Mahoney: Receive.

Mr. Abrams: Receive the acknowledgement that it's not being pulled off the table, right?

Mr. Dahilig: Receive Items 3 and 3.a. for the record. There are two (2) letters dated 03/09/16 and 03/23/16.

Ms. Higuchi-Sayegusa: The matter is still lodged with the Hearings Officer, but because of, you know, there were letters that were submitted, we just want to make sure that the record is clean.

Mr. Abrams: Okay. Move to receive the two (2) letters, (Items) 3 and 3.a., for Contested Case (No.) CC-2015-18, Class IV Zoning Permit Z-IV-2015-29, Use Permit U-2015-28, Special

Permit SP-2015-9, Tax Map Key (4) 2-5-005:080, CPR Unit 1, John Hoff Trust and Lorna Hoff Trust.

Chair Mahoney: Is there a second?

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried 5:0.

Mr. Chun: Thank you, Mr. Chair and members of the Commission.

Chair Mahoney: Thank you.

Withdrawal (3/23/16) of Contested Case CC-2015-16, Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27, Special Permit SP-2015-8, Tax Map Key (4) 5-2-022:014, CPR Unit 2 = Susan Gailey Trust and Kim E. Richard Trust by Jonathan Chun, Esq.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I.4. This is a withdrawal dated 03/23/16 of Contested Case Hearing No. CC-2015-16, which are permits numbers Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27, and Special Permit SP-2015-8 at Tax Map Key (4) 5-2-022:014, CPR Unit No. 2. This is the Susan Gailey Trust and Kim E. Richard Trust by Jonathan Chun, Esq.

We would recommend receiving the item for the record.

Chair Mahoney: Can we have a representative for the applicant, please?

Mr. Chun: Thank you very much. Mr. Chair, Jonathan Chun on behalf of the applicant. The applicant has instructed me, as per the letter that we sent to the Commission, to withdraw her application on this matter.

Chair Mahoney: Thank you. Chair will entertain a motion.

Mr. Abrams: Move to receive Item 5, withdrawal of Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26, Special Permit SP-2015-7, Steve Ruddell and Merlyn Ruddell Trust.

Chair Mahoney: Is there a second?

Ms. Higuchi-Sayegusa: I'm sorry. Are we on Gailey?

Chair Mahoney: We should be on Gailey.

Mr. Keawe: I thought we were (on No.) 4.

Mr. Ho: Gailey?

Chair Mahoney: On No. 4, yes.

Mr. Keawe: Not (No.) 5.

Chair Mahoney: We're on Item No. 4.

Mr. Abrams: Oh, sorry. Excuse me.

Chair Mahoney: So the numbers would have to change.

Ms. Higuchi-Sayegusa: You can withdraw.

Mr. Abrams: Withdraw all of that, yes. Withdraw that No. 5. Now that I've practiced up, I get to (inaudible). (Laughter in background) Sorry. Move to receive withdrawal letter of Contested Case CC-2015-16, Class IV Zoning Permit Z-IV-2015-28, Use Permit U-2015-27, Special Permit SP-2015-8, Tax Map Key (4) 5-2-022, CPR Unit 2, Susan Gailey Trust and Kim E. Richard Trust.

Chair Mahoney: Okay.

Mr. Ho: Second.

Chair Mahoney: So it's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

Withdrawal (3/23/16) of Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26, Special Permit SP-2015-7 = Steven V. Ruddell/Merlyn W. Ruddell Trust by Jonathan Chun, Esq.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I.5. This is similar to Item I.3. with respect to withdrawal, and there is a slight typo on the item. It's a withdrawal of a letter dated 03/03/16 of Class IV Zoning Permit Z-IV-2015-27, Use Permit U-2015-26, and Special Permit SP-2015-7. This is the Steven V. Ruddell and Merlyn W. Ruddell Trust by Jonathan Chun, Esq. And again, there is another letter dated 03/23/16 from Mr. Chun asking for the reinstatement of the application for the above permits and move forward with the Contested Case Hearing.

Again, the Department has no objections should the Commission...you should just receive the items for the record.

Chair Mahoney: Okay. Could we hear from the representative for the applicants again, please?

Mr. Chun: Good morning, Mr. Chair and members of the Commission. Thank you for your consideration of this matter. I really don't want to confuse people and the issue on this, but I will need to follow the instructions of my client. On 03/03/16, we sent a letter withdrawing the application. On 03/23/16, I requested, on behalf of my client, to withdraw the withdrawal of the application. This morning I got another communication from my client instructing me to withdraw the withdrawal of the application. So this morning... (Laughter) I mean, I'm not

making this up, okay? (Laughter) So this morning I got a communication from my client...this morning at 8:21...stating that it's my official instruction to ask to withdraw the application for a homestay, so I will have to, based upon the instruction from my client this morning, to ask the Commission to withdraw the application for a homestay application. I really apologize to the Commission for this confusion, but... (Laughter) I need to follow my instructions. Thank you very much.

Mr. Dahilig: The Department would have no objections.

Mr. Ho: And this would be the end of it? (Laughter in background)

Chair Mahoney: We won't go there right now. It's to withdraw the application, correct? Yeah. Okay, so...

Mr. Chun: I would suggest the Commission take an action as soon as they can. (Laughter)

Chair Mahoney: Yes. Okay, so the request by the representative is to withdraw the application totally, right?

Mr. Abrams: Mr. Chair, I make a motion, pursuant to Ruddell's counsel, to withdraw their Class IV Zoning Permit Application Z-IV-2015-27, Use Permit U-2015-26, and Special Permit SP-2015-7, Steve Ruddell/Merlyn Ruddell Trust for their homestay.

Chair Mahoney: Okay. It's been moved.

Mr. Ho: Second.

Chair Mahoney: Seconded. It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried 5:0. Thank you.

Mr. Chun: Thank you, Mr. Chair and members of the Commission for your indulgence in this matter.

Chair Mahoney: Thank you.

Request (3/10/16) to Amend Condition No. 21 of Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12 and Use Permit U-2008-10, Tax Map Key (4) 2-8-008:001, to allow additional time to complete construction of the project in Kōloa Town, Kōloa, Kaua'i = Kōloa Village, LLC (fka Kōloa Town, LLC).

Mr. Dahilig: Mr. Chair, we are on Item I.6. This is a request dated 03/10/16 to amend Condition No. 21 of the Project Development Use Permit PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12, and Use Permit U-2008-10 at Tax Map Key (4) 2-8-008 Parcel 001 to allow additional time to complete construction of the project in Kōloa Town, Kōloa, Kaua'i. This is Kōloa Village, LLC, formerly known as Kōloa Town, LLC.

The Department has reviewed the matter, and Dale will be presenting the recommendation on behalf of the Department.

Chair Mahoney: Okay, thank you.

Staff Planner Dale Cua: Good morning, Mr. Chair and members of the Commission. What's been handed out to you is an updated status report regarding the project that's before you. At this time, I would like to just highlight points of the Director's Report.

Mr. Cua read the Summary, Project Data, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: Maybe at this time, I'd like to conclude with that, and then should the Commission decide, we can then move on to the recommendation for the applicant's request.

Chair Mahoney: Is there a representative for the applicant? Could you state your name for the record, please?

Lorna Nishimitsu: Good morning, Commissioners. Lorna Nishimitsu on behalf of Kōloa Village, LLC. The original permits for the development of this mixed-use project, as Mr. Cua noted, were given in June 2008. The original permits were issued to a predecessor in interest of Kōloa Village, LLC. So the primary developer who got the permits ended up in a foreclosure proceeding. In December 2011, the bank, through the foreclosure proceeding...the lender, I should say, got the property back. Up to that time, there were no conditions that had been satisfied. There was some architectural work, etc. that had been done by the original developer, but nothing that was approved by the Planning Department. So the lender had the property, got an extension of time to complete the conditions, and then sold the property in December 2014 to my client. So from the time that my client...and of course the lender didn't move to satisfy the conditions. And it's not that my client is trying to force the blame off on somebody else, but just to explain that since it acquired the property in December 2014, in the past year and three (3) months, it has done a lot of work; working with the consultants to get plans prepared for submittal, meeting with County officials, Public Works, Water, Planning, and State Department of Health personnel, just trying to get all of this done. And of course...I think you all know that just because you have plans that the consultant has prepared, that the owner has approved, you give them to the governmental agency for review, and there is going to be a kickback; not once, but usually several times, so it's an ongoing process. But what I tried to do is show you that as of March 2016, there were conditions in that matrix that had been...you know, what the status of the conditions is. Since that time, with the new updated matrix, I highlighted the changes where there has been some forward progress on the developer's part. What we are hoping that you will agree is that there has been a yeoman's effort on the part of the applicant to meet and conclude the project efforts that could almost be likened to being superhero in comparison because for a project that languished for six (6) years, you know, one and one-fourth year period of time, they've done a lot. And perhaps this could be viewed as a sympathy plea on my part, but it is requested that the Commission concur that the evidence before you, that the efforts taken by the applicant, warrant giving them that additional two (2) years to get the project going. They've

gotten their NPDES Permit to do the grading, so the grading plans need to be approved, and as soon as that happens, the site work can begin. They have their application in to subdivide out that portion of the land that needs to be added to the County right-of-way. You know, government has approved, in concept, all these plans, but the nuts and bolts of the design are still being reviewed by, I guess, the peanut counters. So on that basis, the principals of Kōloa Village, Robert Alverado and Mike Serpa, who are not here, and myself, request that this Commission give us that additional time to move towards the completion. Thank you.

Chair Mahoney: Are there any questions for the applicant by members of the Commission?

Mr. Keawe: I've got a couple. Lorna, I understand the first developer...obviously his timing was terrible because we ran into recession in 2008. Barring another similar event, do you feel that your client has the ability to go ahead and complete the project as designed?

Ms. Nishimitsu: I haven't received any information contrary to that. It's not that I inquired about how much is being borrowed for the construction, but I know what they've done with Esaki Surveying, with the wastewater consultant, with the architect, and with our firm. So large sums of money have been thrown at getting all of that ready to conclude. Are we going to hit another recession? Is that what you're saying?

Mr. Keawe: No, I'm just saying, you know, do you feel comfortable, from what you've seen so far, that these two (2) individuals have the wherewithal to complete the project as designed?

Ms. Nishimitsu: Yeah, to date, I've seen nothing that would convince me otherwise because they have...as I said, they have put in the funds to get to the state we're at within a relatively short period of time when you factor in the period where the project had languished. We are hopeful, of course, that...and the marketing indicates that there is a market for the product; both the commercial and the residential portions.

Mr. Keawe: And that's a big question because it is a marketing issue. They've got units to sell.

Ms. Nishimitsu: Yes, but market...of course the analysts, the real estate people, I mean, it's some part speculation, also. They know that there's a demand, but whether, by the time the project is completed, everything will sell out immediately, I don't think anybody can foresee that.

Chair Mahoney: Commissioner Ho.

Mr. Ho: Lorna, is this your update that you handed out?

Ms. Nishimitsu: Yes.

Mr. Ho: When you say "Processing", is that internally, your internal? Or is with the Planning Department?

Ms. Nishimitsu: Some of it is because it was sent back by Public Works, for example, for revisions, so that means we are, our consultants, are in the process of revising the documents for resubmittal. In some, we have submitted to Planning and are awaiting their assessment of what we are proposing. For example, the...Item 14, which is establishing the protocol for providing free public parking for overflow from Kōloa Neighborhood Center functions which are, generally speaking, on weekends. So we've submitted a proposal for the Department to review and consider, and get back to us as to whether it's acceptable, so it's still processing.

Chair Mahoney: Any other questions for the applicant? Commissioner Katayama.

Mr. Katayama: Lorna, in Condition 21, you have sort of a variable start point with the issuing of the construction permits for the start of construction. Yet, you have a cliff that everything needs to be completed by a certain date. Is that kind of condition reasonable for your client? I guess what I'm saying is that would it be more reasonable to have a fixed period once construction has started, as opposed to an end date where you don't know when you're going to start. I mean...

Ms. Nishimitsu: When the building permits will be issued.

Mr. Katayama: Exactly.

Ms. Nishimitsu: Of course every developer, I think, would be more comfortable with having it measured from the time of building permit issuance because prior to that time, there's this back and forth that is occurring...

Mr. Katayama: Well, it's a review process; ongoing review process that...

Ms. Nishimitsu: Yes. And yet, because of the way the previous condition...the original condition had been worded, we tried to track that language. However, of course if the Commission is willing to give us a defined period of time for completion after the period or after the issuance of building permits, that would give the client and the contractor a greater comfort level that performance can, in fact, be realized. Right now, we are just doing the grading plans and we haven't gotten the grading permit yet; although we expect to get it. After the grading is completed, then the building permit process commences, you know, for the actual physical structures. So to answer your question, yes, we would like it to run from building permit issuance.

Mr. Katayama: Thank you.

Mr. Keawe: Mike, is that something that has been done in the past with regard to so many years subject to once you get the building permit? I remember reading several that had such kind of stipulation. And if that's something that the Commission would approve, we'd have to amend the whole language in Item 21.

Mr. Dahilig: It is something we struggle with because...at the end of the day, we want clear paths to accountability, and we want these projects to go forward. One issue that we run into is if we use the phrase, "shall apply for building permits within one (1) year", they can have the

building permit sit and not actually pull the building permits for construction, so that's why, you know, you see the issuance language. The date is really a function of that...kind of that backstop to try to not have the actual, as Commissioner Ho did refer to this processing element, actually become a way to prolong the entitlement timeline. And so, you notice some of the language, if you look at how it's been constructed in the original language of the permits, even though you may have had it, say, five (5) years from zoning approval, it also has a fixed date as a way to backstop any issues. As Lorna mentioned, it's to...this is a large project, and to have the degree of review and compliance, you know, across the agencies, I mean, it does, in effect, sometimes take superhero powers to actually go do this type of stuff. But at the end of the day, I think, when you look at the totality of this, if the Commission wants to look at a different way of measuring, I guess, compliance and holding accountability under Condition 21, I don't think we have any objections to just leaving it as a fixed date, but we write these conditions with certain trigger points as a means of trying to cover all bases to ensure that the actual permitting process does not become a way to squat on a permit entitlement. So, you know, we can certainly try to massage the language if that's what the Commission's will is, but we think, as Dale's recommendations will reveal, we do believe there is, as compared to some other projects that are out there, there is significant progress behind this project and we feel that continued support of it is warranted.

Chair Mahoney: Any further questions?

Mr. Katayama: Well, Mr. Chair, would the Department, then, take a different metrics on...you know, we key on substantial construction. Would that be a metrics? Because once you've put in place construction contracts, would that...and the project becomes bonded for completion...would that be, sort of, a proper metrics?

Mr. Dahilig: It could work in this case. Certain cases, I believe, you know, that also may be prudent. When these permits were approved...what, Dale? Back in 2009?

Ms. Nishimitsu: '08.

Mr. Dahilig: 2008. I mean, I don't think we ran into much of the entitlement squatting type of situations that...because people were actually, you know, fully funded, pushing very quickly. These...and it's only in this phenomena of using the permitting process as a way of prolonging the entitlements...I don't think really kind of arose until we actually started seeing it, you know, after the recession. So, you know, substantial construction may be a good metric; however, it does become more of a legal contractual type of standard that, sometimes, is hard to discern from an inspection standpoint. We could definitely use substantial construction, but it is something that is, if you go before a judge, in the eye of the beholder whether you've reached that level, and sometimes that gets litigated out. I mean, I know that there is a definition of it, but factually, whether a slab that has certain piping in there is substantial construction, you know, it's...you can argue one way or the other. But I think, you know, the proposal is on the right track where you would say, you know, are there other metrics that we can use to encourage development and have it done timely without having to deal with these fixed date amendments? I'm sure we can look at it.

Mr. Katayama: Yeah, I'm not opposed to a fixed date completion if that is a clear, precise measurement. It just seems sort of interesting that the start of construction is variable, but the completion is fixed, and the size of this project, you know, if you got the permit today, that's only two (2) years.

Mr. Dahilig: Right.

Mr. Katayama: I don't think that's reasonable, but we don't mind seeing Lorna. (Laughter in background)

Ms. Nishimitsu: Oh, I was hoping to be retired by then. (Laughter in background)

Chair Mahoney: Other questions?

Mr. Abrams: Yeah, I...Mike, one (1) question. I guess substantial construction, I mean, goes way back to like Nukoli'i days, right?

Mr. Dahilig: Yeah.

Mr. Abrams: Where people were vesting rights and those type of things. And I'm not quite sure, you know, how you want to even get it around that because once they put the foundations in, which is what I understood was substantial construction, that's when you start vesting rights.

Mr. Dahilig: Yeah, and...

Mr. Abrams: Then at that point there's a lot more give than take, I guess, which would be...and to sort of have it open-ended like that, I think, is a good idea, so that you can deal with it down the road, and I'm not quite sure whether we would ever be able to revoke the permits because that would be almost disastrous. Let's say they are three-quarters finished, right, and the date comes up, and, I mean, the process to revoke that permit would get very messy, wouldn't it?

Mr. Dahilig: Yeah, and I think the point you bring up, as well as Commissioner Katayama's point, you know, that there is a pragmatism that gets lost in this language. It does. So you know, the difficulty of being consistent in ensuring compliance, I think, is what we are trying to balance with the pragmatism of understanding that, you know, in reality when we do something like this, it is saying we want everything built out in two (2) years from now; or June...from June, two (2) years from then, right? So...

Mr. Abrams: I mean, probably the more scarier one would be the aspect that the building codes could've changed by that date and they'd be under all kinds of different...other concerns that I know are, somewhat, now with people in the housing. If they didn't get their water meter a year ago, they've got big changes, so they want to try and hurry up and complete it. So I don't have any problem with it other than it's just sort of a stick to help them move along and hopefully it all works out.

Mr. Ho: Would that be the basis for a performance bond? You would put...attach to a permit?

Mr. Dahilig: You know, we typically look at performance bonds in situations that only affect either public improvements or situations that may relate to health and safety. So for instance if demolition is proposed as part of a condition of approval and demolition has not occurred yet, you know, and the demolition is meant for health and safety reasons, that may be the type of situation where we could, from a construction standpoint, require bonding for the private improvements that are on the property. But otherwise, you know, in terms of actually building out the for sale product, we typically would not look at a performance bond because that is meant for the market product versus the general public.

Mr. Abrams: Lots of times that's the lenders side, too. They may want to bond separately to make sure it is done, too, yeah? But that would be the County's domain.

Mr. Dahilig: That's a private agreement with the lender and the...

Chair Mahoney: Okay. Any other discussion? Can we...?

Mr. Keawe: Just one last... Lorna, is your client willing to accept the Planner's recommendation on the time?

Ms. Nishimitsu: It was actually a time we had proposed in our request back in March, but I'm glad to hear that the Commissioners understand that the reality of doing a project of this size often times forces the developer to come back before the Commission asking for another extension because although they've commenced construction, they are not going to be able to complete by the next date that this Commission allows them. So we asked for two (2) years from 2016. If the Commission is willing to give a greater period of time, we are certainly not going to refuse it because it...all it means for them is they don't have to pay me to appear before you again. And for the record, Mike Serpa, one of the principals in Kōloa Village, LLC, is here.

Chair Mahoney: Any questions?

Mr. Abrams: Are we ready for a motion?

Chair Mahoney: Can we go back to the Planner to hear the recommendations?

Mr. Cua: Sure. So I'll go ahead and read the recommendation for the request.

Mr. Cua read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that concludes the Department's recommendation.

Chair Mahoney: Thank you. So, the Chair will entertain a motion.

Mr. Abrams: Mr. Chair, I move that we approve Staff's recommendation to amend the completion of construction of this project to June 10, 2018 for Project Development Use Permit

PDU-2008-11, Class IV Zoning Permit Z-IV-2008-12, and Use Permit U-2008-10, Kōloa Village, formally Village of Kōloa Town, LLC.

Chair Mahoney: Okay. There's a motion. Do I hear a second?

Mr. Ho: Second.

Chair Mahoney: Moved and seconded. Any further discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

Mike Serpa: Thank you.

Chair Mahoney: Thank you.

COMMUNICATION (For Action)

Mr. Dahilig: We are on Item J. This is for Communications. We do not have anything for action this morning.

COMMITTEE REPORTS

Subdivision (NONE)

Mr. Dahilig: Item K, Committee Reports. We do not have any Subdivision reports due to no Committee meeting this morning.

UNFINISHED BUSINESS (For Action)

Class IV Zoning Permit Z-IV-2016-10 to allow construction of two (2) additional fuel storage tanks on a parcel located along Waapa Road in Nāwiliwili, approx. 300 ft. south of the Kanoa Street/Nāwiliwili Road intersection and further identified as 3185 Waapa Road, Tax Map Key 3-2-004:016, and containing a total area of 1.3154 acres = *Kaua'i Petroleum Company, Ltd.*

Mr. Dahilig: We are on Item L. This is Unfinished Business for Action. Class IV Zoning Permit Z-IV-2016-10 to allow construction of two (2) additional fuel storage tanks on a parcel located along Waapa Road in Nāwiliwili, approximately 300 feet south of the Kanoa Street/Nāwiliwili Road intersection and further identified as 3185 Waapa Road, Tax Map Key 3-2-004:016, and containing a total area of 1.3154 acres. The applicant is Kaua'i Petroleum Company, Ltd. The Director's Report was received by the Commission Clerk on 12/29/15 and the hearing was closed and action deferred indefinitely on 01/12/16.

Mr. Chair, there is a Supplemental No. 1 Director's Report pertaining to this matter, and Mr. Cua can provide the supplemental information that has transpired since the last hearing.

Mr. Cua: Thank you, Mr. Chair and members of the Commission. I'll be moving to the Director's Report.

Mr. Cua read the Additional Findings section of the Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Dahilig left the meeting at 10:12 a.m.

Mr. Dahilig returned to the meeting at 10:14 a.m.

Mr. Cua: Maybe, rather than reading these sections, I'll just hold off for now, and if the Commission continues, then we can move on to the recommendation for the project.

Chair Mahoney: Is there a representative for the applicant present?

Michael Belles: Good morning, Mr. Chairman and members of the Planning Commission. For the record, my name is Michael Belles, representing the applicant, and sitting to my immediate right is Mr. David Harjo, General Manager of Senter Petroleum, which is currently known as Kaua'i Petroleum, the applicant in the particular case before you today.

Chair Mahoney: Okay. Are there any questions for the applicant?

Mr. Keawe: Yes, I've got a few. In looking at the filing under the proposed uses of the tank, it talked about the installation of an earthen core ring around the tank and then an ecology block dike floor that had, I believe, some kind of chemical seal on that; all in the effort to mitigate potential leaks. My question is more related to the big leak that they had in Honolulu with regard to the aviation fuel spill that ended up in Honolulu Harbor, and from what I could read, the tanks are basically sitting on grade. They do not sit on a concrete core. The core surrounds the tank. Is that correct?

Mr. Belles: I'll leave the engineering discussion of this to Mr. Harjo because as a lawyer, I know enough to misrepresent things, and not intentionally, so I'll turn it over to Mr. Harjo.

David Harjo: Thank you, Mr. Councilperson [sic]. That is accurate. The way that the facility is constructed...and if you don't mind, I'll point to the exhibit that's displayed.

Mr. Keawe: Okay. Yes.

Mr. Harjo: As I understand it, the question is the earthen core and the impermeable liner and how we would be able to contain the product within that facility?

Mr. Keawe: Yes.

Mr. Harjo: Okay. So as you notice, what we have here is an ecology block wall, so what we did is we took 2 by 2 by 4 ecology blocks of concrete, set them on top of each other, and then we sealed them with the product. And on the inside, what we have is a polyurea liner. It's a spray-on liner that makes it sufficiently impermeable to satisfy the requirements of our Federal requirements. So anything that happens within the facility, our job and our duty is to try to confine that type of material within this area until we have opportunity to clean that up or do whatever it is that we want to do with that or we have to do with that. So the size of this wall is sufficient to handle both the largest tank that we have in the facility, plus additional capacity for a 25-year rain event. So if it's raining really hard and your largest tank, you know, something is compromising that, this area has the ability to contain all of that.

Mr. Keawe: The other point was...it's a steel tank, right? And it sits on grade.

Mr. Harjo: That's correct.

Mr. Keawe: Which is dirt compacted. What's the useful life of that tank? I think the issue was, as I recall reading, there was a tank in Honolulu that was very old and it developed a crack in the base of the tank, and that seeped down into the sub-core and eventually made its way to the ocean. So how long do these tanks last? Or...and there was another thing called...what was it called? Cathodic protection system for the bottom.

Mr. Harjo: Correct.

Mr. Keawe: And what is that? Is that something different than what's used within the ecology block wall?

Mr. Harjo: It is. So the first question, as I understand, is the life of the tank, and then the second is the cathodic protection.

Mr. Keawe: Right.

Mr. Harjo: So to the first point, the life of the tank, whenever we have a tank constructed, we go through a process that's under the American Petroleum Institute, No. 650, so an engineer will come in and they will look at the tank as it's constructed. They will do a full examination of that tank and make sure that it is structurally sound. So that determination is typically good for twenty (20) years. So whenever we have a tank built, the engineer will say for the next twenty (20) years, this meets all the requirements of Federal law and the appropriate construction elements. What we do as a company, we come in every five (5) years and we take each tank out of service. We'll go in and do that type of inspection at that time to ensure that there are no cracks or that the welds are holding and everything is good. The issue that we have in the State of Hawai'i is corrosion, so we'll come in and we'll patch all of the potential, you know, corrosion elements within the tank, make sure that it is safe and can hold the product the way that it's supposed to. So the tank life is typically about twenty (20) years from inspection to inspection. There have been tanks within the State of Hawai'i that's been there for, you know, sixty (60) years because of the maintenance that they come in and continually modify that and upgrade it and make sure that it's safe. Does that answer your question on the first?

Mr. Keawe: Yes, that answers my question.

Mr. Harjo: On the second, the cathodic protection...because we have steel, and it's mostly for the corrosion. The cathodic protection is a mechanism to help, kind of, repel the corrosion on the steel. So you have an impressed current that runs to the actual steel that basically helps to protect it against the corrosion because corrosion is our biggest enemy on this tank farm. So, whatever we can do to help minimize that corrosion is what we do with the cathodic protection, and then we follow that up with regular maintenance and ensuring that we're doing the appropriate testing to make sure that it is safe and high quality.

Mr. Keawe: Good. One last question. You've got two (2) you are going to change and you still have several others in the farm. Are they in fairly good shape? Or are you looking to replace some of those in the next several years?

Mr. Harjo: The tanks that we have right now are in very good shape. This tank is our largest tank. We just did the API 653 inspection a year and a half ago, so we came in and the engineer recommended that we do some, you know, some maintenance on that so we followed all of the engineer's recommendations on that. This tank is the next largest. It was...we had our 653 inspection within the past couple of years, so the same thing; we put in double bottoms to ensure that there's no leakage from the bottom of the tank. All of the other tanks have had our 653 inspection within the past three (3) years, so they are all in pretty good shape now, but we'll then go and cycle through, and again, those five (5) years, we'll go in and do that type of analysis, that inspection. This tank, Tank No. 2, has Jet A product, so the requirements are a little bit more stringent for that. We'll have to go in every two (2) years and look at that to make sure that it is of high quality; that we are doing what's necessary to preserve the integrity of the fuel. So we'll go and do that type of inspection every two (2) years.

Mr. Keawe: Thank you.

Chair Mahoney: Any further questions for the applicant? Seeing none. Can we hear from the Planner, please?

Mr. Cua: Moving on to the recommendation.

Mr. Cua read the Recommendation section of the Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that concludes the Department's recommendation.

Chair Mahoney: Does the applicant have any objections to the conditions?

Mr. Belles: No, Mr. Chairman. We've had the opportunity to work closely with the Department and we really appreciate the super level of cooperation we have received throughout the duration of this, and really (inaudible) restraint they've shown and patience in allowing us to basically defer this matter since January the 12th (inaudible) ninety (90) days through today. And thank

you, as well, for your patience and understanding, and would ask that you approve the recommendation as proposed by the Planning Department Staff. Thank you.

Chair Mahoney: Okay, thank you. Chair will entertain a motion.

Mr. Keawe: I move to approve Class IV Zoning Permit Z-IV-2016-10 to allow construction of two (2) additional fuel storage tanks on a parcel located on Waapa Road in Nāwiliwili.

Mr. Abrams: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0. Thank you.

Mr. Belles: Thank you very much.

Mr. Dahilig: Mr. Chair, all we have left on the agenda is the executive session.

ANNOUNCEMENTS

Topics for Future Meetings

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihū'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihū'e, Kaua'i, Hawai'i 96766 on Tuesday, April 26, 2016.

Mr. Dahilig: Just for Announcements, I will state that we have circulated the pending applications' batting order list for the Commission to take a look at. The next meeting will be held on Tuesday, April 26, 2016 in this room. And, I guess, for the executive session, I will refer it over to the County Attorney for (inaudible).

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes sections 92-4, 92-5(a)(4), the purpose of this executive session for the Planning Commission is to consult with the County's legal counsel on questions relating to *Coconut Beach Development LLC, a Delaware Limited Liability Company, vs. County of Kaua'i; Civil No. 12-00065 SOM-KSC, Tax Map Key 4-3-02:15, 16 & 20. This consultation involves consideration of the Commission's powers, duties, privileges, immunities, and/or liabilities with regard to this agenda item.*

Ms. Higuchi-Sayegusa: Okay. So we are on Item H.1., Executive Session. Pursuant to the Hawai'i Revised Statutes sections 92-4 and 92-5(a)(4), the purpose of this executive session for the Planning Commission is to consult with the County's legal counsel on questions relating to Coconut Beach Development LLC, a Delaware Limited Liability Company, versus County of Kaua'i; Civil No. 12-00065 SOM-KSC, Tax Map Key 4-3-02: 15, 16, and 20. This consultation

involves consideration of the Commission's powers, duties, privileges, immunities, and/or liabilities with regard to this agenda item.

I recommend that we vote to enter into executive session.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: Move to go into executive session.

Mr. Katayama: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor?

Ms. Higuchi-Sayegusa: I apologize. And also, I guess, it's simultaneous...at the conclusion of the executive session to...for adjournment.

Chair Mahoney: Can we include that in the motion?

Mr. Katayama: As part of the executive session, do we need to invite the Director?

Ms. Higuchi-Sayegusa: Right. Well, I mean, yeah, if that's...

Mr. Katayama: From a historical perspective.

Ms. Higuchi-Sayegusa: If you folks prefer, that would be good. Yeah.

Mr. Abrams: Okay. I'll withdraw my one, and make a new motion.

Chair Mahoney: Okay. Can...the second. Was there a second already, or no?

Mr. Katayama: I seconded it.

Chair Mahoney: Okay, can you withdraw?

Mr. Katayama: Yes, I withdraw.

Chair Mahoney: Okay, so we'll start with a new motion, please.

Mr. Abrams: Move to go into executive session and also to, after completion of the executive session, have an adjournment, and would also request that our Planning Director be included in the executive session as a resource.

Mr. Katayama: Second.

Chair Mahoney: Okay. It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried 5:0 for executive session.


The Commission recessed this portion of the meeting at 10:30 a.m.

The meeting resumed in executive session at 10:36 a.m.

ADJOURNMENT

Chair Mahoney adjourned the meeting at 11:08 a.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.